

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION**

Charlotte Ann Smith,)	Civil Action No.: 0:11-3251-MBS
)	
)	
Plaintiff,)	
)	
)	
v.)	
)	
US Bank National Association)	
as Trustee successor in interest to Bank)	
of America NA as successor by merger)	
to LaSalle Bank NA as Trustee for)	
Certificate Holders of EMC Mortgage)	
Corporation Loan Trust 2005-A)	<u>ORDER AND OPINION</u>
Mortgage Loan Pass-Through)	
Certificates Series 2005-A,)	
)	
EMC Mortgage Corporation, and Parent)	
Companies, The Bear Stearnes)	
Companies, LLC and JP Morgan Chase)	
& Companies,)	
)	
Guardian Fidelity Mortgage, Inc.,)	
Guardian President and CEO Howard)	
H. Wright, Jr., Guardian Assistant)	
Manager Stacey Youngblood, Guardian)	
Chairman of the Board John Good,)	
Guardian Member)	
Owners/Shareholder[s]/)	
Stockholders,)	
)	
Defendants.)	
)	
)	

This matter is before the court pursuant to the joint motion to dismiss, for judgment on the pleadings and for summary judgment by Defendants, Bank of America, N.A. as Successor by Merger to LaSalle Bank, National Association as Trustee for Certificate Holders of EMC Mortgage Corporation Loan Trust 2005-A Mortgage Loan Pass-Through Certificates, Series 2005-A, EMC Mortgage

Corporation, The Bear Stearns Companies, LLC, and JPMorgan Chase & Co. (collectively “Defendants”). (See ECF No. 40.) After Charlotte Ann Smith (“Plaintiff”) failed to respond to Defendants’ motion, the Magistrate Judge filed a Report and Recommendation, wherein she recommended that Plaintiff’s action be dismissed with prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). (ECF No. 60.) On July 31, 2012, the court entered an order (the “July Order”) dismissing Plaintiff’s action with prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41(b). (ECF No. 63.)

On August 12, 2012, the court was advised by Defendants that Plaintiff filed for Chapter 13 bankruptcy protection on July 31, 2012. (ECF No. 66, p. 2.) As a result, the automatic stay imposed by 11 U.S.C. § 362(a) was in effect on the day the court entered the July Order. In re Singleton, 358 B.R. 253, 256 (D.S.C. 2006) (“Generally, filing a petition under Chapter 13 of the Bankruptcy Code triggers an automatic stay of creditor proceedings against a debtor’s property.”) (citing 11 U.S.C. § 362(a)). Therefore, because Plaintiff’s case was subject to the automatic stay on the day the July Order was entered, the court **VACATES** the July Order. (ECF No. 63.)

The court is now advised that Plaintiff’s bankruptcy case was dismissed by the the United States Bankruptcy Court for the District of South Carolina on August 20, 2012. (ECF No. 66-1.) When the petition giving rise to the automatic stay is dismissed, the automatic stay terminates immediately. See In re Singleton, 358 B.R. at 256. Accordingly, Plaintiff’s action in this court is dismissed with prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The court adopts the Magistrate Judge’s Report and Recommendation and incorporates it herein by reference.

IT IS SO ORDERED.

/s/Margaret B. Seymour

MARGARET B. SEYMOUR

CHIEF UNITED STATES DISTRICT JUDGE

January 15, 2013
Columbia, South Carolina